

WILLS LAW CHAPTER W2 LAWS OF LAGOS STATE

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CHAPTER W2

WILLS LAW

A Law to make provision with respect to wills.

[1990 No. 2.]

[24th August, 1990]

[Commencement.]

1. Power to dispose property by will

(1) It shall be lawful for every person to bequeath or dispose of, by his will executed in accordance with the provision of this law, all property to which he is entitled, either in law or in equity, or at the time of his death—

Provided that the provisions of this Law shall not apply to any property which the testator had no power to dispose of by will or otherwise under Customary Law to which he was subject.

(2) The power given under this section shall extend to—

(a) all contingent, executory or other future interests in any property, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will;

(b) all rights of entry for conditions broken and other rights of entry; and

(c) such property to which the testator may be entitled at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

2. Provision for family and dependants

(1) Notwithstanding the provisions of section 1 of this Law where a person dies and is survived by any of the following persons—

(a) the wife or wives or husband of the deceased; and

(b) a child or children of the deceased—

that person or those persons may apply to the court for an order on the ground that disposition of the deceased estate effected by his will is not such to make reasonable financial provision for the applicant.

(2) In this section “reasonable financial provision” in the case of an application made by virtue of subsection (1) (a) of this section by the husband or wife or wives of the deceased (except where the marriage with the deceased was subject of a decree of judicial separation in accordance with any Customary Law and at the date of the death the decree was in force and the separation was continuing, means such financial provision as it would be reasonable in all the circumstances of the case for husband or wife or wives to receive, whether or not that provision is required for his or her maintenance.

(3) An application under this section shall be exercisable only within a period of six months from the grant of the probate.

3. Will of person under age invalid

Subject to section 6 of this Law no will made by any person under the age of eighteen years shall be valid.

4. Requirement for the execution of a will

(1) No will shall be valid unless—

(a) it is in writing;

(b) it is signed by the testator or signed in his name by some other person in his presence and by his direction, in such place on the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will;

(c) the testator makes or acknowledge the signature in the presence of at least two witnesses present at the same time;

(d) the witnesses attest and subscribe the will in the presence of the testator but no form of attestation or publication shall be necessary.

(2) No signature under this section or under any other provision of this Law shall be operative to give effect to any disposition or direction which is underneath or follows it nor shall it give effect to any disposition or direction inserted after the signature shall be made.

5. Execution of appointments by will

No appointment made by will in exercise of any power shall be valid unless the same be executed in the manner hereinbefore required and every will executed in such manner shall, so far as respect the execution and attestation thereof, be a valid execution of a power of appointment by will notwithstanding it shall have been expressly required that will be made in exercise of such power should be executed with some additional or other form of execution or solemnity.

6. Provision as to wills of seamen, mariners and crew of commercial airlines

(1) Notwithstanding the foregoing provisions of this Law any seaman, or mariner (not being a member of the Nigeria Navy) or crew of commercial airline being at sea or in the air may dispose of his estate though under the age of eighteen years.

(2) A testamentary disposition made by a person to whom the preceding subsection applies shall, notwithstanding that such disposition has not been made in compliance with the formalities prescribed under the provisions of this Law, be valid if the court is satisfied that the instrument expresses the testamentary intention of the testator.

7. Will not void because of incompetency of attesting witness

If any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof such will shall not on that account be invalid.

8. Gifts to attesting witness or wife or husband of attesting witness void

If a person shall attest the execution of any will to whom or to whose wife or husband any beneficial legacy, estate, interest, gift or appointment of or affecting any property (other than and except charges and directions for payment of any debt or debts) shall be thereby given or made such legacy, estate, interest, gift or appointment shall, so far as only concerns such person attesting the execution of such will or the wife or husband of such person or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will or to prove the validity or invalidity thereof, notwithstanding such legacy, estate, interest or gift or appointment mentioned in such will:

Provided that the attestation or a will by a person to whom or whose spouse there is given or made any such disposition as is described in this section shall be disregarded if the will is duly executed without his attestation and without that of any other such person.

9. Creditor attesting a will charging estate with debt

In case by any will any property shall be charged with any debt or debts and any creditor, or the wife or husband of any creditor whose debt is so charged shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the validity or invalidity thereof.

10. Executor to be admitted a witness

No person shall on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will or a witness to prove the validity or invalidity thereof.

11. Wills revoked by marriage

Every will made by a man or a woman shall be revoked by his or her marriage (other than a marriage in accordance with Customary Law) except—

(a) a will made in exercise of a power of appointment which the property thereby appointed would not default of such appointment pass to his or her heir, executor or administrator or the person entitled as his or her next of kin under any written law relating to the distribution of the estate of person dying intestate;

(b) a will expressed to be made in contemplation of the celebrating of that marriage:

Provided that the names of the parties to the marriage contemplated are clearly stated.

12. No Revocation by presumption from altered circumstance

No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

13. In what cases wills may be revoked

No will or codicil, or any part thereof, shall be revoked otherwise than as provided by section 11, or by another will or codicil executed in a manner hereinbefore required or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

14. Alteration in will after execution

No obliteration, interlineation, or alteration made in any will after the execution thereof shall be valid or have any effect except in so far as the words or effect, of the will before such alteration shall not be apparent, unless such alteration shall be executed in the like manner as is hereinbefore required for the execution of the will:

Provided that the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witness be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.

15. Revival of revoked will

No will or codicil, or any part thereof, which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in a manner hereinbefore required, and showing an intention to revive the same and when any will or codicil which shall be partly revoked and afterwards wholly revoked, shall be revived such revival shall not extend so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

16. Effect of subsequent disposition or other act

No disposition or other act made or done subsequently to the execution of a will of or relating to any property mentioned in the will except an act by which such will shall be revoked as aforesaid, shall or prevent the operation of the will with respect to estate or interest in the property as the testator had power to dispose of by will at the time of his death.

17. Wills to speak from death of testator

Every will shall be construed, with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention shall appear by the will.

18. Residuary disposition to include lapsed or void dispositions

Unless a contrary intention shall appear by the will any property comprised or intended to be comprised, in any disposition in such will contained, which shall fail or be void by reason of the death of the legatee in the lifetime of the testator or by reason of such disposition being contrary to law or otherwise incapable of taking effect, shall be included in the residuary disposition (if any) contained in such will.

19. General disposition of land to mean right of occupancy

A disposition of land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner and any other general disposition which would describe a right of occupancy if the testator had no freehold estate which could be described by it, shall be construed to mean the right of occupancy of the testator to which such description shall extend.

20. General gift to include property under general power of appointment

A bequest of property described in a general manner shall be construed to include any property in respect of which he may have a power of appointment and such bequest shall operate as an execution of such power of appointment unless a contrary intention shall appear by the will.

21. The words “die without issue” or “die without leaving issue” etc. to be construed

In any disposition of property the words “die without issue” or “die without leaving issue” or “have no issue” or any other words which may import either a want or failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of the issue, unless a contrary intention shall appear by the will.

22. Disposition of property to trustee or Executor

Where any property shall be disposed of to any trustee or executor such disposition shall be construed to pass the whole interest which the testator had power to dispose of by will in such property unless a contrary intention shall appear.

23. Presumption of survivorship

For the purposes of this Law, where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such death (subject to any order of the court), shall be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

24. Gift to children leave issue living at testator’s death

Where any person being a child or other issue of the testator for whose benefit a disposition shall be made for any interest not terminable at or before the death of such person, shall die in the lifetime of the testator leaving issue and any such issue of such person shall be living at the time immediately after the death of the testator, the disposition shall not lapse but take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

25. Repeal

The Wills Law Cap. 141 Laws of Lagos State 1973 Edition is hereby repealed.

26. Interpretation

In this Law unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

“child” includes a child whose paternity has been acknowledged in accordance with the Customary Law applicable in the State, a child adopted whether before or after the commencement of this Law in pursuance of an adoption order made under the Adoption Law, Cap. A5, Laws of Lagos State, and a child legitimated under the Legitimacy Law Cap. L65, Laws of Lagos State,

“the court” means the High Court;

“property” includes right of occupancy, sublease, subunderlease and funds, securities for moneys, shares, debts, choses in action, rights, credits, goods and all other property whatsoever which by law devolves upon the executor or administrator and any share or interest therein;

“will” includes a testament, a codicil and an appointment by will or by writing in the nature of a will in exercise of a power.

27. Citation and commencement

This Law may be cited as the Wills Law and shall come into force on the 24th day of August 1989.